IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2187 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RR TRIVEDI EDUCATION TRUST

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR BHARAT T RAO for the Petitioner
MRS HARSHA DEVANI, AGP for Respondents Nos. 1-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/02/2003

ORAL JUDGEMENT

The petitioner before this Court is an educational trust registered under the Bombay Public

Trusts Act, 1950 (hereinafter referred to as 'the Trust'). The Trust has been running a secondary school since the year 1967. Upon introduction of the higher secondary school (i.e. grouping of Standards XI and XII as higher secondary), in the year 1976, the Trust had been permitted to establish a higher secondary school in the general stream. Thus, the Trust has been running higher secondary school since the year 1976 and offers courses in general stream. In the year 1991, the petitioner applied for opening classes of higher secondary school in science stream also. The permission to open classes in science stream was granted on 17th August, 1991. Thus, the Trust has been offering courses in science stream in higher secondary since the academic year 1991-92. The question is that of the grant.

According to the respondent Authorities, the Trust can be said to have started the higher secondary school in science stream in the year 1991. Hence, it would be governed by the Government Resolution dated 7th May, 1988 (Annexure-'B' to the petition). The said Resolution dated 7th May, 1988 stipulates, inter alia, that Non-Government higher secondary school established from June, 1988 shall not be entitled to receive grant for a period of five years. The learned AGP Mrs.Devani has submitted that the aforesaid Resolution has since been modified under Government Resolution dated 25th October, 1989. The right of the Trust to receive grant, therefore, shall be governed by the said Resolution dated 25th October, 1989. The respondent Authorities have neither filed the counter affidavit, nor have placed the above referred Resolution dated 25th October, 1989 on the records of the matter. The contention, therefore, can not be countenanced.

Mr.Rao has submitted that the Trust has been running a higher secondary school since the year 1976. In the year 1991, some more classes in the higher secondary school were opened so as to offer courses in the science stream as well. Opening of new classes can not be equated with that of opening a new school. According to Mr.Rao, the aforesaid Resolution dated 7th May, 1988 has wrongly been interpreted by the respondent Authorities so as to deny a legitimate right of the Trust to receive grant from the State Government. He has submitted that the question has been decided by this Court (Coram: R.K.Abichandani, J.) in the matter of NARANBBHAI J.PATEL AND ANR. V/S. THE STATE OF GUJARAT AND ORS. (Special Civil Application No.7244/1989 decided on 28th December, 1993).

In the above matter, the very Resolution dated 7th May, 1988 was the subject matter of consideration by this Court. This Court has held that "...The Resolution does not speak of starting of classes by a Higher Secondary School. The period of five years is required to be computed, under the Resolution, from the date of starting of Higher Secondary School and not from the dates on which various classes were started or added. Therefore, the petitioner's school which was in existence for more than five years when it added science class in the school was not a new school within the meaning of the impugned Resolution dated 7th May, 1988 and was therefore, not disentitled to the grant in respect of additional class."

In view of the above judgment, the Trust can not be said to have started or established a higher secondary school in the year 1991 within the meaning of the above referred Resolution dated 7th May, 1988. It is, therefore, declared that the petitioner - Trust has started the higher secondary school in the year 1976 and that it has added some additional class/s in the year 1991. The Trust is, therefore, entitled to receive grant for such additional class/s as may be admissible under the Grant-in-Aid Code.

The petition is allowed accordingly. Rule is made absolute. There shall be no order as to costs.

(Ms. R.M. Doshit, J.)

/sakkaf